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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/520,173
Filing Date: July 21, 2005
Appellant(s): NISSEN, VIBEKE

Todd M. Oberdick
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 16, 2010, appealing from the Office action mailed February 18, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

1, 3-5, 8-12, 14-19, and 28-32.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,643,630	Hinzpeter et al.	7-1997
EP 0221850	Yang, Robert K.	7-1990

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-5, 8-12, 14-19 and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al. (4,753,805) in view of Hinzpeter et al. (5,643,630).

Cherukuri et al. teach compressed chewing gum tablets having a water content of about 2% and a method for making them. A chewing gum composition is prepared including gum base granules composed of natural and synthetic resin and elastomers in an amount ranging from 14 to 50 wt % (col. 6 lines 14-24), flavors in an amount ranging from 0.05 to 3 wt % (col. 8 lines 14-34), natural resins (e.g. rosin esters) including glycerol esters of polymerized rosin in an amount ranging from about 10 to 75 wt % (col. 6 lines 24-42), sweeteners ranging in an amount from about 0.001 to 90 wt % depending on the sweetener selected (col. 6 line 52-col. 7 line 21), plasticizer and active ingredients (col. 9 lines 14-29), and optionally wax (col. 7 lines 36-40). The amounts taught for these components substantially overlap with the amounts claimed by Applicants. The flavorings and active agents are mixed (teared) into the gum-base composition prior to compression (Example I; col. 8 lines 14-29).

The granules are compressed into tablets. Magnesium stearate is present in the compressed tablets as a lubricant (col. 5 lines 1-10). The lubricant is added following the granulation of the gum center (Example II). The lubricant aids in granulation by facilitating removal from the mold, reducing the wear on the dies and punches, and minimizing the potential for capping (col. 4 lines 34-60).

Regarding claim 1, Cherukuri et al. are silent as to the "improved and sticky" texture of the tablet resulting from the inclusion of the natural resin. However, as the invention of Cherukuri et al. comprises the same ingredients as claimed by Applicants in substantially similar amounts, this improved texture would have been expected to be present in the invention of Cherukuri et al. absent convincing arguments or evidence to the contrary.

Cherukuri et al. are silent as to the gum center being encapsulated by the barrier layer.

Hinzpeter et al. teach compressed tablets comprising a lubricant wherein the lubricant is deposited directly on the tableting machine to facilitate the production of tabletted materials and form a barrier layer on the tablet utilizing minimal amounts of lubricant (col. 1 lines 57-62). They teach their process as an improvement over the prior art, wherein the lubricants (e.g. magnesium stearate) were combined with the material to be compressed (col. 1 lines 33-40). Hinzpeter et al. teach their invention as an improvement of the prior art process as it requires less lubricant, requires less pressure for tableting, and reduces the wear on the compression tools (col. 2 lines 48-

55). The barrier layer as taught by Hinzpeter et al. is provided during the manufacturing of the tablets (col. 2 lines 20-24).

One of ordinary skill in the art at the time the invention was made wishing to improve the compressed tablet of Cherukuri et al. the process by which it was made by providing a barrier layer using less magnesium stearate or other lubricant, would have found it obvious to employ the tableting method of Hinzpeter et al. for tableting the chewing gum of Cherukuri et al. in order to provide a tabletted chewing gum with a barrier layer while requiring less lubricant and reducing the wear on the production equipment. The use of magnesium stearate as a barrier layer for tabletted materials, as taught by Hinzpeter et al., instead of mixing with the granulated chewing gum material as taught by Cherukuri et al., would have been an obvious improvement of the prior art method at the time the invention was made. The barrier layer as taught by Hinzpeter et al. is provided during the manufacturing process. It is noted that the limitation of the barrier layer being provided during the manufacturing process is considered to be a product by process limitation and does not determine the patentability of the chewing gum product. In any event, Hinzpeter et al. teach forming the barrier layer during tableting.

Claims 1, 3-5, 8-12, 14-19 and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (EP 0 221 850) in view of Hinzpeter et al. (5,643,630).

Yang teaches compressed chewing gum tablets having a water content of about 2% and a method for making them. A chewing gum composition is prepared including

gum base granules composed of natural and synthetic resin and elastomers (col. 8 lines 47-58)), flavors in an amount ranging from about 1 to 10 wt % (col. 10 lines 30-55), natural resins (e.g. rosin esters) including glycerol esters of polymerized rosin in an amount ranging from about 10 to 75 wt % of the gum base (col. 8 line 59-col. 9 line 13), sweeteners ranging in an amount from about 0.001 to 98 wt % depending on the sweetener selected (col. 9 lines 29-65), plasticizer and active ingredients (col. 7 line 58-col. 8 line 19), and optionally wax (col. 9 lines 14-26). The amounts taught for these components substantially overlap with the amounts claimed by Applicants. The flavorings and active agents are mixed (teared) into the gum-base composition prior to compression (col. 11 lines 28-37).

The granules are compressed into tablets. Magnesium stearate is present in the compressed tablets as a lubricant. The lubricant aids in the tableting by facilitating removal from the mold, reducing the wear on the dies and punches, and easing the ejection of the tablet from the die (col. 10 lines 3-23).

Regarding claim 1, Yang is silent as to the "improved and sticky" texture of the tablet resulting from the inclusion of the natural resin. However, as the invention of Yang comprises the same ingredients as claimed by Applicants in substantially similar amounts, this improved texture would have been expected to be present in the invention of Yang absent convincing arguments or evidence to the contrary.

Yang is silent as to the gum center being encapsulated by the barrier layer.

Hinzpeter et al. teach compressed tablets comprising a lubricant wherein the lubricant is deposited directly on the tableting machine to facilitate the production of

tabletted materials and form a barrier layer on the tablet utilizing minimal amounts of lubricant (col. 1 lines 57-62). They teach their process as an improvement over the prior art, wherein the lubricants (e.g. magnesium stearate) were combined with the material to be compressed (col. 1 lines 33-40). Hinzpeter et al. teach their invention as an improvement of the prior art process as it requires less lubricant, requires less pressure for tableting, and reduces the wear on the compression tools (col. 2 lines 48-55). The barrier layer as taught by Hinzpeter et al. is provided during the manufacturing of the tablets (col. 2 lines 20-24).

One of ordinary skill in the art at the time the invention was made wishing to improve the compressed tablet of Yang, and the process by which it was made, would have found it obvious to employ the tableting method of Hinzpeter et al. for tableting the chewing gum Yang in order to provide a tabletted chewing gum with a barrier layer while requiring less lubricant and reducing the wear on the production equipment. The use of magnesium stearate as a barrier layer for tabletted materials, as taught by Hinzpeter et al., instead of mixing with the granulated chewing gum material as taught by Yang, would have been an obvious improvement of the prior art method at the time the invention was made. The barrier layer as taught by Hinzpeter et al. is provided during the manufacturing process. It is noted that the limitation of the barrier layer being provided during the manufacturing process is considered to be a product by process limitation and does not determine the patentability of the chewing gum product. In any event, Hinzpeter et al. teach forming the barrier layer during tableting.

(10) Response to Argument

Appellant repeatedly argues that Cherukuri and Hinzpeter are not from the same field of endeavor (p. 16).

This argument is not persuasive. Cherukuri teaches a tabletted chewing gum product, where the chewing gum material is granulated and subsequently compressed to form a chewing gum tablet. Hinzpeter is concerned with tableting granulated materials. In order to tablet the chewing gum products, one of ordinary skill would utilize a tableting device as taught by Hinzpeter. As the tableting apparatus/method taught by Hinzpeter is not specific to the material to be tabletted, the fields of Cherukuri and Hinzpeter are considered to be from the same field of endeavor, again as it is necessary to employ a tableting device to form the tabletted chewing gum of Cherukuri.

If, as Appellant alleges, the references are not related, it is unclear how Cherukuri's chewing gum material is to be tabletted. While the references of Cherukuri and Hinzpeter do not overlap in classification, one of ordinary skill would understand that the chewing gum products and methods as found in the US Patent Classification in class 426, subclasses 3, 4, 5 and 6, do not include the apparatus utilized to make said chewing gum products. This does not mean, however, that these areas are not related. Clearly, one of ordinary skill would have employed a tableting device such as that taught by Hinzpeter to produce the final tabletted chewing gum product of Cherukuri.

Appellant argues that Cherukuri is not concerned with improvements of the formulation of the gum base and chewing gum (p. 19).

It is unclear how this argument is relevant to the instant claims. Cherukuri teaches a tabletted chewing gum product as required by the instant claims. There is no requirement that the gum formulation be an "improvement", just that the formulation be tabletted.

Appellant argues that there is no teaching, motivation or suggestion in Cherukuri to diminish the need for compression materials to provide the claimed chewing gum tablet (p. 20).

The Courts have made clear that the teaching, suggestion, or motivation test is flexible and an explicit suggestion to combine the prior art is not necessary. The motivation to combine may be implicit and may be found in the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved. *Id.* at 1366, 80 USPQ2d at 1649. MPEP § 2143 (G).

The Examiner has not set forth a teaching, suggestion, or motivation provided by Cherukuri to reduce the amount of compression aid present in the chewing gum tablet. The motivation set forth was provided by Hinzpeter, where it is taught that the reduction in the amount of lubricant (i.e. magnesium stearate) by the introduction of the magnesium stearate directly on the tableting device provides for advantages including a reduction in the amount of lubricant required, reduced wear on the tablet press, and

improved strength of the tablet due to the presence of reduced amounts of lubricants within the tablet (col. 2 lines 48-55).

The Examiner further notes that Hinzpeter was patented nearly 10 years after the invention of Cherukuri, indicating that improvements to tableting processes were made after the invention of Cherukuri that could be utilized to improve previously disclosed tableting processes and the products made by the processes.

Appellant argues that the product of Cherukuri is not taught to have a texture resembling conventional chewing gum, nor does the product have an "improved and sticky texture" (p. 19).

This argument is not persuasive. There is no requirement in the claims that the tabletted chewing gum has a conventional texture. Further, it is unclear what Appellant holds to be a conventional chewing gum texture. There are an extensive number of chewing gum products on the market. These products come in many different forms, including pellets, sticks, filled products, etc. It cannot be said that there is one "conventional" texture to which all chewing gum product manufacturers aspire.

Regarding the "improved and sticky" texture, the composition of Cherukuri comprises the same conventional chewing gum ingredients in overlapping amounts as required by the instant claims. Therefore, the chewing gum product of Cherukuri would be expected to have the same "improved and sticky texture" as required by the instant claims. Appellant has not provided convincing arguments or evidence to show otherwise.

Appellant argues that Cherukuri adds substantial amounts of compression aid in the chewing gum composition (p. 21).

The Examiner disagrees that the amounts of compression aid taught by Cherukuri are substantial. The compression aid is taught to be present in amounts as low as 0.25% by weight of the composition (col. 5 lines 5-6). Further, the instant claims are rejected over the combination of Cherukuri in view of Hinzpeter, where Hinzpeter teaches that the amount of compression aid can be reduced while still providing a compressed tablet. Therefore, the tablet produced as a result of the combination of Cherukuri in view of Hinzpeter would comprise a minimal amount of compression aid, as required by the instant claims.

Appellant argues that Cherukuri is not concerned with the ingredients used in the chewing gum composition (p. 21).

This argument is not persuasive. Cherukuri, in teaching a tableted chewing gum product, teaches a chewing gum product comprising ingredients as required by the instant claims. Therefore, it is considered that Cherukuri shows the same concern for the chewing gum ingredients as the instantly claimed invention.

Appellant argues that Cherukuri is directed towards a substantial amount of compression aids in the composition (p. 22).

The Examiner disagrees that the amounts of compression aid in the invention of Cherukuri must be substantial. The compression aid is taught to be present in amounts as low as 0.25% by weight of the composition (col. 5 lines 5-6). Further, the instant claims are rejected over the combination of Cherukuri in view of Hinzpeter, where Hinzpeter teaches that the amount of compression aid can be reduced while still providing a compressed tablet. Therefore, the tablet produced as a result of the combination of Cherukuri in view of Hinzpeter would comprise a minimal amount of compression aid, as required by the instant claims.

Appellant argues that there is no teaching, motivation or suggestion in Cherukuri to provide the chewing gum tablet with a barrier layer (Brief, p. 22).

The Courts have made clear that the teaching, suggestion, or motivation test is flexible and an explicit suggestion to combine the prior art is not necessary. The motivation to combine may be implicit and may be found in the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved. *Id.* at 1366, 80 USPQ2d at 1649. MPEP § 2143 (G).

The Examiner has not set forth a teaching, suggestion, or motivation provided by Cherukuri to provide a barrier layer the chewing gum tablet. The motivation set forth was provided by Hinzpeter, where it is taught that the reduction in the amount of lubricant (i.e. magnesium stearate) by the introduction of the magnesium stearate directly on the tableting device provides for advantages including a reduction in the amount of lubricant required, reduced wear on the tablet press, and improved strength

of the tablet due to the presence of reduced amounts of lubricants within the tablet (col. 2 lines 48-55). This lubricant would serve to provide the compressed chewing gum tablet with a barrier layer.

The Examiner further notes that Hinzpeter was patented nearly 10 years after the invention of Cherukuri, indicating that improvements to tableting processes were made after the invention of Cherukuri that could be utilized to improve previously disclosed tableting processes and the products made by the processes.

Appellant appears to argue that the barrier layer of the instant invention facilitates a moderated tackiness of the gum base granules (p. 22).

From the instant claims, the moderated tackiness of the gum base granules is attributed to the presence of at least one natural resin (claim 1). It is unclear what Appellant is referring to when it is stated that the moderated tackiness of the gum base granules is provided by the presence of the barrier layer. Further, the combination of the prior art references provides for the presence of a barrier layer as required by the instant claims.

Appellant argues that the compression aid in the instant invention is not part of the chewing gum composition because it is located in the barrier layer (p. 25).

It is unclear how the claimed barrier layer, which is provided during the manufacturing process and encapsulates the claimed chewing gum center as part of a compressed chewing gum tablet, is not part of the chewing gum composition. Appellant

seems to imply that the barrier layer is somehow separate from the chewing gum tablet, yet instant claim 1 clearly indicates that the barrier layer is present in the compressed chewing gum tablet.

Appellant argues that the granules of Cherukuri are not gum base granules (p. 25).

This argument is not persuasive. The granules of Cherukuri comprise gum base. The granules are therefore considered to be gum base granules.

Appellant argues that Cherukuri does not require the presence of a natural resin (p. 26).

This argument is not persuasive. Cherukuri specifically teach natural resins for inclusion in their chewing gum compositions. Further, it is well known in the chewing gum art to include natural resins in chewing gum compositions. As the chewing gum composition of Cherukuri is granulated and compressed, as is the instantly claimed composition, the selection of a natural resin for inclusion in the chewing gum composition is not considered to provide any unexpected results and is therefore considered to be obvious over the teachings of Cherukuri.

Appellant again argues as to the propriety of combining Cherukuri and Hinzpeter (p. 27).

This argument is not persuasive. As stated previously, Cherukuri teaches a tabletted chewing gum product, where the chewing gum material is granulated and subsequently compressed to form a chewing gum tablet. Hinzpeter is concerned with tableting granulated materials. In order to tablet the chewing gum products, one of ordinary skill would utilize a tableting device as taught by Hinzpeter. As the tableting apparatus/method taught by Hinzpeter is not specific to the material to be tabletted, the fields of Cherukuri and Hinzpeter are considered to be from the same field of endeavor, again as it is necessary to employ a tableting device to form the tabletted chewing gum of Cherukuri.

If, as Appellant alleges, the references are not related, it is unclear how Cherukuri's chewing gum material is to be tabletted. While the references of Cherukuri and Hinzpeter do not overlap in classification, one of ordinary skill would understand that the chewing gum products and methods as found in the US Patent Classification in class 426, subclasses 3, 4, 5 and 6, do not include the apparatus utilized to make said chewing gum products. This does not mean, however, that these areas are not related. Clearly, one of ordinary skill would have employed a tableting device such as that taught by Hinzpeter to produce the final tabletted chewing gum product of Cherukuri.

Appellant argues that Yang and Hinzpeter are from different technical fields (p. 31).

This argument is not persuasive. As with Cherukuri, Yang teaches a tabletted chewing gum product, where the chewing gum material is granulated and subsequently

compressed to form a chewing gum tablet. Hinzpeter is concerned with tableting granulated materials. In order to tablet the chewing gum products, one of ordinary skill would utilize a tableting device as taught by Hinzpeter. As the tableting apparatus/method taught by Hinzpeter is not specific to the material to be tabletted, the fields of Yang and Hinzpeter are considered to be from the same field of endeavor, again as it is necessary to employ a tableting device to form the tabletted chewing gum of Yang.

If, as Appellant alleges, the references are not related, it is unclear how Yang's chewing gum material is to be tabletted. While the references of Yang and Hinzpeter do not overlap in classification, one of ordinary skill would understand that the chewing gum products and methods as found in the US Patent Classification in class 426, subclasses 3, 4, 5 and 6, do not include the apparatus utilized to make said chewing gum products. This does not mean, however, that these areas are not related. Clearly, one of ordinary skill would have employed a tableting device such as that taught by Hinzpeter to produce the final tabletted chewing gum product of Yang.

Appellant argues that one of ordinary skill would not find information in Yang regarding the production of a tabletted chewing gum having a texture resembling that of a conventional chewing gum (p. 33).

There is no requirement in the claims that the tabletted chewing gum has a conventional texture. Further, it is unclear what Appellant holds to be a conventional chewing gum texture. There are an extensive number of chewing gum products on the

market. These products come in many different forms, including pellets, sticks, filled products, etc. It cannot be said that there is one "conventional" texture to which all chewing gum product manufacturers aspire.

Appellant argues that there is no hint in Yang that a barrier layer would improve the texture of the compressed chewing gum (pp. 34-35).

The Examiner is unclear as to why the Appellant is arguing that there is no teaching in Yang that a barrier layer would improve the texture of the compressed tablets. From the instant claims, it is understood that it is the natural resin present in the gum composition which provides the improved texture. Therefore, it was not put forth by the Examiner that the barrier layer would improve the texture of the compressed chewing gum. Rather, it was put forth that the combination of Yang and Hinzpeter to provide a compressed tablet with a barrier layer would allow for a reduction in the amount of lubricant to be used in the tablet.

Appellant again argues that no improvement of Yang is needed, and that one of ordinary skill would not look so far afield as to find Hinzpeter relevant art to Yang (p. 36).

This argument is not persuasive. As stated previously, Yang teaches a tabletted chewing gum product, where the chewing gum material is granulated and subsequently compressed to form a chewing gum tablet. Hinzpeter is concerned with tableting granulated materials. In order to tablet the chewing gum products, one of ordinary skill

would utilize a tableting device as taught by Hinzpeter. As the tableting apparatus/method taught by Hinzpeter is not specific to the material to be tabletted, the fields of Yang and Hinzpeter are considered to be from the same field of endeavor, again as it is necessary to employ a tableting device to form the tabletted chewing gum of Yang.

If, as Appellant alleges, the references are not related, it is unclear how Yang's chewing gum material is to be tabletted. While the references of Yang and Hinzpeter do not overlap in classification, one of ordinary skill would understand that the chewing gum products and methods as found in the US Patent Classification in class 426, subclasses 3, 4, 5 and 6, do not include the apparatus utilized to make said chewing gum products. This does not mean, however, that these areas are not related. Clearly, one of ordinary skill would have employed a tableting device such as that taught by Hinzpeter to produce the final tabletted chewing gum product of Yang.

The Examiner further notes that Hinzpeter was patented more than 10 years after the invention of Yang, indicating that improvements to tableting processes were made after the invention of Yang that could be utilized to improve previously disclosed tableting processes and the products made by the processes.

Appellant argues that Yang does not suggest encapsulation of a chewing gum center by a barrier layer. Appellant goes on to state that the decrease in the amount of lubricants in the chewing gum composition leads to moderated tackiness of the gum base granules (p. 36).

The Examiner has not set forth a teaching, suggestion, or motivation provided by Yang to provide a barrier layer the chewing gum tablet. The motivation set forth was provided by Hinzpeter, where it is taught that the reduction in the amount of lubricant (i.e. magnesium stearate) by the introduction of the magnesium stearate directly on the tableting device provides for advantages including a reduction in the amount of lubricant required, reduced wear on the tablet press, and improved strength of the tablet due to the presence of reduced amounts of lubricants within the tablet (col. 2 lines 48-55). This lubricant would serve to provide the compressed chewing gum tablet with a barrier layer.

Further, the Examiner is again unclear as to why the Appellant is arguing that there is no teaching in Yang that a barrier layer would improve the texture of the compressed tablets. From the instant claims, it is understood that it is the natural resin present in the gum composition which provides the improved texture. Therefore, it was not put forth by the Examiner that the barrier layer would improve the texture of the compressed chewing gum. Rather, it was put forth that the combination of Yang and Hinzpeter to provide a compressed tablet with a barrier layer would allow for a reduction in the amount of lubricant to be used in the tablet.

Appellant argues that Yang uses considerable amount of lubricants in the chewing gum composition (p. 36).

The Examiner disagrees. Appellant points only to the upper limit of the range taught by Yang. The lower limit of that same range is 0.1% by weight of the total composition. 0.1% is not considered to be a considerable amount of lubricant.

Appellant argues that there is no teaching, motivation or suggestion in Yang to provide the chewing gum tablet with a barrier layer (p. 37).

The Courts have made clear that the teaching, suggestion, or motivation test is flexible and an explicit suggestion to combine the prior art is not necessary. The motivation to combine may be implicit and may be found in the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved. *Id.* at 1366, 80 USPQ2d at 1649. MPEP § 2143 (G).

The Examiner has not set forth a teaching, suggestion, or motivation provided by Yang to provide a barrier layer the chewing gum tablet. The motivation set forth was provided by Hinzpeter, where it is taught that the reduction in the amount of lubricant (i.e. magnesium stearate) by the introduction of the magnesium stearate directly on the tableting device provides for advantages including a reduction in the amount of lubricant required, reduced wear on the tablet press, and improved strength of the tablet due to the presence of reduced amounts of lubricants within the tablet (col. 2 lines 48-55). This lubricant would serve to provide the compressed chewing gum tablet with a barrier layer.

The Examiner further notes that Hinzpeter was patented nearly 10 years after the invention of Yang, indicating that improvements to tableting processes were made after

the invention of Yang that could be utilized to improve previously disclosed tableting processes and the products made by the processes.

Appellant argues that the compression aid is not part of the instant chewing gum composition as it is present in the barrier layer (pp. 38-39).

This argument is not persuasive. It is unclear how the claimed barrier layer, which is provided during the manufacturing process and encapsulates the claimed chewing gum center as part of a compressed chewing gum tablet, is not part of the chewing gum composition. Appellant seems to imply that the barrier layer is somehow separate from the chewing gum tablet, yet instant claim 1 clearly indicates that the barrier layer is present in the compressed chewing gum tablet. Regardless of whether the compression aid (i.e. lubricant) is mixed with the granules or applied as a barrier layer it is considered to be part of the chewing gum composition as it is present in the composition to be chewed by the consumer.

The Examiner notes that the arguments set forth above also apply to claims 28-31 (p. 42).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Nikki H. Dees/

Examiner, Art Unit 1781

Conferees:

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1781

/Christine Tierney/
Supervisory Patent Examiner, Art Unit 1700